IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 481 (MS) OF 2006

Sukhram,
S/o Shri Ganga Ram,
R/o House No. 139, Village Dhakrani,
(Behind Hydle Colony), Pargana Pachhwadoon,
Tehsil Vikasnagar, District Dehradun. .....Petitioner.

Versus

1. 2nd Additional Civil Judge (Junior Division), Dehradun.
2. Smt. Vidyawati,
   W/o Shri Suraj Prakash Sharma,
   (widow of late Shri Ratan Singh),
   R/o House No. 1-P-374 (Behind D.C.C.D. Office), Post Office Dak Pathar, Dehradun. .....Respondents.

Mr. Rajendra Dobhal, Advocate for the petitioner.
Learned Standing Counsel for the respondent no.1.

Dated: 03.05.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 19th April, 2006 by which the amendment has been refused in the replication filed by the petitioner.

Briefly stated, a suit was filed by the plaintiff/petitioner praying for permanent injunction. During the pendency of the suit, the defendant claimed the possession by way of counter claim. The plaintiff, therefore, has filed a replication where he has claimed the amendment under Order 6 Rule 17 C.P.C. The Additional Civil Judge has rejected the application on the

ground that the facts mentioned in the proposed amendment are already covered in the replication and therefore, the amendment being not necessary, the same has been disallowed.

Learned Counsel for the petitioner ahs prayed that in view for the findings of the court below that the plea is already available therefore, it will not change the nature of the proceedings.

Petitioner has referred ***Bachan Lal Vs. State of Uttaranchal [2003 (2) ARC 266],*** where it has been observed as under:-

"17. Order VI, rule 17 has been interpreted by the Hon'ble Supreme Court in various decisions and the Apx Court has given guide lines for the law Courts that the Courts while deciding such prayers should not adopt a hyper technical view. Aforesaid guide lines have been given by he Apex Court in B.K. Narayan Pillai v. Parameswaran Pillai and another (2000) 1 SC Cases 712 : 2000 CFBRC 32. It has also been emphasized in the aforesaid decision that technicalities of law should not be permitted to hamper the Court in administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled multiplicities of litigation.

18. Admittedly in the present case cause of action which the plaintiff has pleaded is cancellation of patta in his favour, either in the original pleadings or in the amended pleadings he is not changing the cause of action. The cause of action still is the same i.e. cancellation of patta and he wants to get it declared null and void. Therefore, it is a fit case where the observations of the Hon'ble Supreme Court that technicalities of law should not be permitted to hamper the Court in administration of justice and further that in order to

avoid uncalled multiplicity of litigation the amendment has to be allowed."

In the light of the judgment of the Apex Court namely Sri ***B.K. Narain Pillai v. Parameshwaran Pillai and another (2000) 1 SCC 712*** as well as ***Raghu Tilak D. John v. S. Rayappan And others (2001) 2 S.C. Cases 472,*** the petitioner is permitted to move before the Civil Judge, if such an application is moved, the same shall be considered before proceeding with the hearing of the case in accordance with the judgment of the Apex Court referred above within a period of one month form the date of presentation of the certified copy of the order.

Subject to the aforesaid observations, writ petition is disposed of.

Copy of the order to be given today.

(Rajesh Tandon, J.)

03.05.2006
Rathour